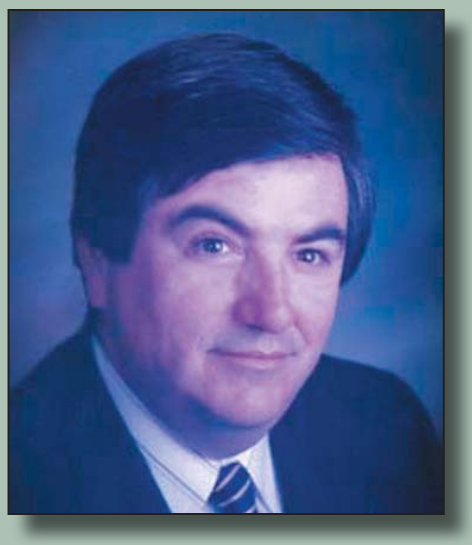
Joe Tovar



Joe Tovar, FAICP, is planning director for the City of Shoreline. Joe is an affiliate associate professor of urban design and planning at the University of Washington where he also serves as the director of special projects for the Northwest Center for Livable Communities. He served on the Central Puget Sound Growth Management Hearings Board from 1992 to 2004 and was the City of Kirkland Planning Director from 1981 to 1992.

Joe was the president of the Washington City Planning Directors Association from 1988 to 1990, during which time that association wrote a white paper, "Toward a Growth Strategy for Washington," to advocate for legislation that ultimately became the Growth Management Act. He holds degrees and certificates from the universities of Washington, California, and Colorado.

Interview with:	**Joe Tovar**
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Tape 1, Side 1

Diane Wiatr: This interview with Joe Tovar is about the history of the Washington State Growth Management Act (GMA). The date is July 27, 2005, and the interview is taking place at the Washington State Department of Community, Trade and Economic Development (CTED) in Seattle. My name is Diane Wiatr, and I will be interviewing Joe Tovar today.

Diane: What interest did you have in land use planning and growth management before 1990?

Joe Tovar: Well, before 1990 I was the planning director for the City of Kirkland starting in 1982. Actually I was elected to the presidency of the Washington City Directors Association in the late 1980s. At that time the City of Kirkland had done quite a bit of comprehensive planning and developing regulations, and was pretty progressive. Our council was very progressive in what they allowed and what they wanted the city to be doing in these areas.

The state's legislation under which we operated was enabling legislation, it mandated for how we would plan. We had the Shoreline Management Act (SMA) and the State Environmental Policy Act (SEPA) from the 1970s that gave us some specific direction on those subject areas, but there was no overarching framework like the GMA telling us how to address a number of things that were becoming more problematic for all the cities.

One of those was, there was really no linkage between the capital side and what the city did, or the county did, with their budget and planning decisions or land use decisions. So, prior to the Growth Management Act, the practice of planning in Washington was largely an exercise in policies to accompany the zoning map and zoning permit. The roads, the parks, capital facilities of other kinds were pretty much the province of the Public Works Department and the Finance Department; there was not always a lot of coordination between Planning and Public Works. In fact there was somewhat of a professional rivalry,

a friendly rivalry, but a rivalry nonetheless between people who were involved in providing these capital projects—largely engineers, finance types, and the planners who were largely coming from a site design, policy planning perspective.

So this was becoming more of a problem because in the late 1980s, at least in the Seattle metro area, we had a lot of serious deficiencies that were starting to become apparent. Permits were being approved for projects, roads were becoming more congested, and there weren't facilities being provided in a very coordinated fashion. So being able to control development permits was really only part of the tools that the cities needed to manage growth. That was one problem.

Another problem, and the reason I think the city planning directors were interested in this, was the lack of good mechanisms to coordinate with the county. In the 1980s this was best addressed in a report issued by a state commission, the Local Governance Study Commission. They were looking at the question in the late 1980s of the statutory role and authority for cities, counties, and special districts. When they issued their report, in the late 1980s, it was titled *The Quiet Crisis in Local Governance*. So, I think that was an indication that the Legislature believed that things weren't working well, because it documented the dysfunctional way that cities and counties and special districts were configured to do things. There was an awful lot of overlap, redundancy, competition, and friction between cities and counties and special districts.

One way I would describe the bottom line of the report was saying was that there was a lot of blurred roles. Counties were trying to provide urban services for urban areas, which they're not well suited to do. Cities were trying to make decisions and trying to put them in the context of some broader regional or county-wide objective, and they didn't really have the resources or reason to know what that bigger context would be. So each was trying to play not only its own role, but the role of other units of government. Then you had special districts off to the side and special districts didn't have land use responsibility directly, but made lots of decisions that had serious implications for land use decisions that cities and counties could make.

So, those were all things that were problems, not just in the 1980s but before. They were many of the kinds of problems that were talked about in the Local Governance Commission's final report.

It made a number of legislative recommendations—there were several bills that were introduced, but only one passed. It was a bill to modify the annexation petition method to lower the percentage required, from 75 percent of assessed value to 60 percent, to make it somewhat easier for some annexations to occur. Because a major conclusion of that whole study was cities should be the ones better suited to provide urban services in urban areas, counties really should not be doing that. Counties should be doing other things—taking care of law and justice, records and elections, lots of ministerial functions that aren't directly related to providing urban services on the ground to people. And then special districts who are pretty much based on doing what they wanted to do without an awful lot of direct oversight for accountability by the people that would be affected by those decisions.

So those were all problems, those were some problems that were precedent to the GMA. How did I relate to what led up to the GMA? One of the things that I did in the 1980s was to work with the other planning directors of the other cities in King County to help talk to King County about these land use questions—of service delivery, impact areas, ultimate annexation areas. When I first began to work with Mary McCumber, who was the planning director in Auburn at the time, we worked on an interlocal agreement between Kirkland and King County to talk about ultimate service delivery and annexation of the areas next to Kirkland.

So it was a real opportunity to look at all the capital implications of local government and what's expected of units of government to have jurisdiction over the area. And the county came to understand that there were times when there were certain deficiencies for them to try and provide those services to areas that were island or peninsulas that were much closer to existing cities to serve. But coming out of that whole effort with the cities and the county, King County, was some language that lives on today in county policy such as: identification of potential annexation areas, impact areas, and urban service delivery areas. So some of these terms are used in King County, even in Snohomish County.

Then when I was president of the City Planners Association, a lot of public sentiment was being expressed about the dissatisfaction with how growth was managed. Some of this was being expressed to state legislators. There was an election in King County and a councilman, a long-term incumbent to the eastside named Bill Reims, was challenged by a newcomer named Brian Derdowski. And there was a shock to the establishment because Derdowski defeated this incumbent. I think that sent a message to a lot of the political establishment in state government that this was an issue that had some potency. Voters were unhappy enough to throw out an incumbent councilman who was a good councilman for his district but, apparently, the voters perceived he was not doing a good enough job for managing growth, which was one of the issues in that campaign. So, there was a lot of unrest about traffic congestion, about property values, about taxes, and concerns about declining quality of life.

And this was all probably heightened for people's awareness by a series of reports that were done in *The Seattle Times* called the "Peirce Reports." The national urbanist Neal Peirce had done a number of these things for a number of metropolitan regions in the country. He came out, spent some time talking to many people, listening to them describe the status quo and the problems that they had and wanted to try and address. In a series of newspaper articles, profusely illustrated with maps and diagrams and narratives from different people he spoke with, he was describing the predicament we were having.

We were having a lot of growth and lot of negative consequences in that growth and a lot of political unrest, but, fundamentally, the problem wasn't bad decisions being made by any one set of elected officials. It was pretty clear that our system for making decisions, the statewide structure, wasn't working very well. It was very disconnected, it was very segmented, very confusing, in some areas actually at cross-purposes.

You could make a good argument that SEPA is very different in its approach to growth and development than the Growth Management Act is today. SEPA being a very incremental, ad hoc, reactive, analytical, piecemeal, and not really proactive or systematic or forward-looking as the Growth Management Act tries to purport itself to be.

So the "Peirce Report" brought this into clear focus for a lot of people and along about that time the Legislature was paying attention to this subject. I know Speaker [of the House of Representatives] Joe King was very interested in this as a major piece of what he wanted to do for the state. And he had a lot of very well placed people in the committees and Legislature—Maria Cantwell, Mary Margaret Haugen, Busse Nutley, Ruth Fisher, I think two or three others, but people who had different pieces of what people were concerned about—transportation or water quality or governance. Mary Margaret Haugen was one of the legislators who participated in the Local Governance Study Commission effort, so she was keenly aware of the problem of the role blurring between cities, counties, and special districts and that was reflected in parts of the Growth Management Act.

So you had legislators who had looked at different pieces of this problem earlier, didn't really make as much headway on it as they might have liked to, but contributed to this sort of holistic approach the Growth Management Act takes. It really looks at pretty much all of the pieces of what other state legislatures have looked at with their laws because it doesn't just do agricultural land preservation, it doesn't just do shoreline, it doesn't just do governance, it does all those things. Some would argue that's a failing and frustrating at times and confusing at times, but from my perspective it makes the most sense to deal with all the pieces so that everything does have some relationship to everything else. It's a more comprehensive way to think about problem solving rather than dealing through the shoreline in isolation or just dealing with projects as they come in and you evaluate them with impact statements. It's a truly comprehensive plan that the GMA really emphasizes.

Diane: Did you play a role in the passage of the GMA?

Joe: Well, many people had fingerprints. The role I guess I played that was probably the most prominent was—in 1989 the city planning directors and the county planning directors gathered at a placed called Crescent Bar in Central Washington. The focus of that conference was, What should a new growth law for our state look like? And we brought in a fellow from Florida named Rick Bernhardt who was very familiar with Florida and their experiences with growth management. He came in and explained to us how they did things in Florida.

We began that whole conference with the premise that we weren't just city or county people who were accountable only to our city and county elected officials, but professionals who had in mind the best interests of the entire state, including both city and county governments. We all went through a group process—brainstorming what works well with the system we had in place at the time, what were the gaps, what were the conflicts, what were ideas that we could we bring from other places like Florida or Oregon. And at the end of three days of thrashing these things around by city and county planning directors from all parts of the state—Walla Walla, Spokane, the coast, Seattle metro region—we pretty much began to find agreement. We accomplished this even though the city and county planning directors organizations were affiliates of our respective the city and county organizations. The fact that the planners were able to find common ground made it much easier, I think, for our parent organizations to begin finding common ground as well.

We were trying to work for the good of all of the people of the state and all of the units of government and trying to take that perspective and not be as doctrinaire or as ideological as we might be in other settings. That was very useful because when we got to thinking from this perspective we could find areas of agreement and issued a consensus report called the "Crescent Bar Report"—actually that's the shorthand for it, the formal title is "Toward a Growth Strategy for Washington."

So, that was something we wrote, it was a product of 60 people at this conference. Chunks of it were written by three or four people, and I was the editor of the whole thing so I made it flow better and wrote some pieces of it. I then published "Toward a Growth Strategy for Washington" in *The Seattle Times* and presented it to the Growth Strategies Commission. I explained it to legislators and the Association of Washington Cities (AWC) as well as the Growth Strategies Commission.

It had a lot of credibility with people because it was the product of the people who were the practitioners of the statutes as they existed and who, therefore, knew how and why those laws did not work well. So, I think we were able to speak with a certain amount of credibility about what worked—why it worked and what didn't work and some ideas about how to make Washington's planning laws work better. So, serving as the

spokesman for the planning directors in advancing our report is the largest role that I can say I played in all this.

When the GMA legislation was drafted I was not drafting the legislation, but I was working with AWC to review pieces of it as it came out and pointed out what I thought were ways to improve it, ways it was problematic. So the first wave of GMA was adopted in 1990. In the fall of 1990 there was an initiative—I-547—that the environmental committee put together because they were arguing GMA didn't go far enough, it didn't have the important mechanism that ultimately became the hearings boards. It had a lot of requirements, but it didn't say what happens if you don't do this.

So Initiative 547 was a much more radical approach, much more top-down than the GMA. The commission that was going to enforce it was 18 people, a much larger group of people, and there was language in the initiative that said all these people must have some commitment to the environmental quality in the state. And depending on how you look at that statement, it's kind of an innocuous, well sure, who's not for the environment, but it was perceived by some people to be an environmental protection act and not a balance of growth management combination approach.

So, it was opposed by many people including the building community. And I wrote an editorial piece for *The Times* called "The Wise Planners' Approach to Initiative 547" and it was arguing that the Legislature had made a good first step. There were pieces they needed to finish, they knew that—we were going to work with them to help do that, but 547 would be going too far in the direction of centralized, top-down planning. It wouldn't be a good fit for the tradition in this state of autonomous local government and regional diversity.

One phrase that is probably overused to the point of being almost meaningless these days is that one size does not fit all. So we were interested in a growth management act that could strike a balance. Certainly requirements that would apply everywhere in the state but, for example, some of the low-growth counties are not planning under the act. That was one way that it would be tailored so it wouldn't be totally one size fits all.

Three different growth hearings boards to reflect different political sensibilities and different parts of the state—another attempt to make it less top-down and centralized than 547 would have been. And then finally, the way that the boards are structured is that they're not all attorneys. There must be at least one attorney and one former local elected official on every board, but neither the former local elected official nor the third person must be an attorney. I think that was a big improvement over the model from Oregon, which is a specialized land use court, all attorneys. Interestingly, I have heard the same conclusion expressed by both planners and attorneys who have practiced in both states.

So, there were a number of things that planners thought would work better than even the Oregon model, and we made those recommendations in the Op-Ed piece that I wrote trying to lay that argument out there. It wasn't that 547 was not trying to speak to an important issue, the need for growth management, but that it went too far, was too top-down, too doctrinaire an approach.

I was also involved in a couple debates. I debated some of the 547 backers on the merits of 547 as opposed to waiting for the Legislature to finish the job in 1991, which is what they did. I think what was more important for the voters was that the legislators, the leaders in the House and Senate, got together and announced that they promised to finish the job in 1991. So the voters had before them the question of, Do you want to throw out the work of 1990, adopt I-547 and all its pieces, and not trust the Legislature to come back with the second half of the Growth Management Act? I think that had something to do with the fact that voters pretty overwhelmingly rejected 547. You could think it's unusual and kind of unfortunate that even today

people who don't like the Growth Management Act will say, "The voters rejected the Growth Management Act," but they're getting confused. The voters did not reject the Growth Management Act, they rejected 547, which was between part one and part two of the Growth Management Act. That's an important point to remember.

Diane: What is your most interesting memory of the events leading up to the enactment of the GMA?

Joe: I would say one of the things is that I'd spent some time looking at legislative issues during the 1980s when I was a planning director. It seemed like every year, many of the issues that were ultimately addressed in the Growth Management Act were subject to legislation and you could usually figure out which interest groups were stakeholders, and who would take which position on which legislation and not a lot got done. One of the things that was unique about the dynamics of the Growth Management Act, leading to the adoption by the Legislature, was that each stakeholder group thought that there was something in it for them. So, it wasn't just going to be environmentalists concerned about environmental issues. It wasn't going to be dealing just with builders concerned about county permit processes. It was going to deal even with city-county coordination issues and role clarification. It dealt with all those things, and I think that holistic approach let everybody get behind it.

The builders were interested in the promise of GMA which was something that would be more predictable, more timely, more reliable than what they perceived as going on before GMA. They had been fighting a project-by-project SEPA compliance kind of a thing. So the builders were interested in that the GMA, they were interested in certainty.

Cities were interested in clarification that they were supposed to be the ones providing urban services to the urban areas and this was not what counties were supposed to be doing.

Counties were interested in—I think they were kind of mixed feelings depending on which county we're talking about because the counties are very different in different parts of the state. But I think as a whole the Counties Association felt benefit in having a system that clarified that for certain things, plainly they were not co-equal partners with the cities. They could tell the cities, "You have to accommodate this many jobs. You must accommodate this much population. We're taking this regional perspective which is a county-wide perspective, and we're taking this larger perspective than each individual city and playing that role of giving you some direction."

Pre-GMA that was anathema, pre-GMA the city perspective on counties was, "How dare you tell us what to do? Where's your authority to tell us what to do?" And, in fact, some of these things were parts of the initial appeals during the first years of the act. Cities wanted to find out if counties could tell them how many people and jobs they had to plan for? The city attitude was, "We don't think they can, we don't see that the GMA gives counties that authority." Well, as it turned out, yes they can and that was settled by several growth board cases. But there was something in it for everybody. I think everybody concluded the pre-GMA system was not working for them—they were having to fight these things year by year, issue by issue, project by project, and it was a standoff. Nothing good was actually happening other than a lot of acrimony and lot of emotion that didn't lead to any progress.

Everybody had a stake, everybody saw the promise of something better than what they had before. I think without that kind of broad perception among all the stakeholders, this whole thing couldn't have happened. There had to be enough people who were willing to say, "Yeah, status quo is not acceptable. We

have to do something else." And the something else is pretty dramatic because, as I said, it dealt with all these different aspects of land use and growth management and governance and environmental protection and on and on and on.

Diane: Do you think that for the most part those promises have been fulfilled? Do builders get predictability and…?

Joe: I would have to say that of all the people that thought they were getting something out of the Growth Management Act, the builders are probably the ones that have the perception that more needs to be done to increase the time limits, and the predictability of the permits process especially. There's some other issues that the building community has about supply and questioning the urban growth area (UGA) concept; even if they were okay with the idea of urban growth areas, questioning whether they should be this tight, "Can't we increase the supply to help with the cost of land?"

But I think by and large builders would say, based on what I've heard and cases that they've filed in the Central Puget Sound region, their position has been, "Look, there's a goal in the Growth Management Act that says that the permit process is supposed to be timely, fair, and predictable. We don't think that it's timely, fair, and predictable." And they've challenged a couple of local governments. There hasn't been a case where I think the question has been couched right exactly on point with, "Is the city's zoning regulation entirely fair and predictable," in how it deals with this type of housing or that type of commercial development.

But there've been cases where the court has nibbled around the edges of it. One would be the sewer—King County's Brightwater Sewage Plant in Snohomish County where Snohomish County created a permit process to look at these things. One of the allegations that King County made was they don't know how many months it's going to take to go through their process because then they have appeals built in and other criteria, and then they make you go back to the first square and start again, and that doesn't look to us like that's very consistent with goal seven. The board agreed—the board said, "Well no, it's not timely, fair, and predictable the way you've designed it, Snohomish County. You need to review it, come up with some idea of how long it might take. We're not going to tell you it has to be this many weeks or this many months, but the way it's written out, it's open-ended theoretically. It could go on forever and we don't see how that squares with goal seven."

So, there've been a few cases where the board did talk about permits—goal seven dealing with permits and predictability. But I'd say that's where the builders have the biggest remaining beef with whether it has fulfilled what they were expecting it would do. I think the environmental community probably is happy with critical areas regulations requirements and the best available science requirement. Whether they feel it goes far enough or not, I think is still an ongoing debate, and the Legislature has issues that they're still chewing on.

I think the cities would have to generally agree that it's been a better system for them because it has increased their ability to be identified as the preferred providers of urban governmental services. I was in Spokane yesterday talking to some folks about this whole question of role clarification under the Growth Management Act. There's a section in the GMA dealing with county-wide planning policy—Section 210—that says something like, cities are the preferred providers of urban governmental services within the urban area. The next sentence, the very next sentence says, and counties are regional governments within their boundaries. A sentence or two later, the same paragraph says, but nothing in this section shall be construed to alter the land use powers of cities. Well, if you look at the words in that section, they're all kind of aligned for a lot of

internal tension. And yet, if you read them closely, as the board was obliged to do in some of the early cases, a major theme was that counties should not be delivering urban governmental services. The act was saying that urban service delivery is what cities should be doing— not exclusively, but primarily.

The board read the act to be saying, "Counties, you're regional government within your boundaries. You set the UGA line, not the cities. You ultimately have to be able to allocate population and employment to cities for you to discharge your duty inside the UGA." So, there was some role clarification from board and court cases that came out of that language and I think, by and large, cities would agree that they don't have a county—at least in Central Puget Sound—taking the position that, "Well, any urban service you deliver we can deliver too." And pre-1990 was definitely the mindset in most counties. The King County Comprehensive Plan is an example right now of a very plain policy—you want urban services, you need to annex or incorporate because we're not configured to do that anymore. So, I think that's something cities would have to look at as a big win for them—validation that they are the ones that should be doing this. And if you look at the number of incorporations and annexations—I made the point yesterday, over 400,000 people in the past 15 years have become city residents by incorporation and annexation. It's interesting to read the newspapers during that whole period of time—when somebody would write an article about the incorporation campaign in "fill in the blank"—Kenmore, Lakewood, Edgewood, Sammamish—all of them, somewhere in the article said, "Well, the Growth Management Act says cities are the ones who should be doing these things and we have these needs so we need to incorporate to do this."

So, I think the public got it. I think that one of the greatest successes of the act was that role clarification that cities are supposed to be doing that, and the flipside is that counties are to be the ones making regional decisions, not cities.

Diane: What was the original intent of the GMA and why do you think it became law?

Joe: Well, you'll get a lot of different answers from different people. Some folks will say the GMA was simply because they were mad about congestion and transportation issues. I think that's too narrow—that was the big issue at the time. There also was a lot of concern about housing affordability and property taxes. I think that the planets just all lined up.

Tape 1, Side 2

Joe: I think that it happened when it happened because of a number of gratuitous circumstances. As I said, the planets lined up. The hot-button issue with a lot of people in the high growth parts of the state. This was something that the business community was concerned about. People were convinced that the old system was broken and needed to be fixed. At the same time, you also have some leadership both in the Governor's Office and the Legislature, which was important; people who were willing to exert their influence on the Legislature.

I think I would credit three people—Governor Gardner, Speaker King, and Senate Majority Leader Jeannette Hayner. Those three people were indispensable to making the GMA happen the way that it did, and as comprehensive as it was. And it took two sessions to get the whole thing out. It's pretty remarkable that something very different from the prior system was able to be birthed. Again, the timing was right, the people were ready for it. There was a lot of growth, there had been a lot of growth. From 1978 to 1990 the state of Washington grew by a million people, and every 12 years we add another million people and OFM projects that out to 2026. So people were aware we had a lot of growth, we're going to continue to have a lot of growth, we need to do a better job than what we were doing prior to 1990. And I think that was the widespread sentiment—

the timing was just right.

Diane: What kind of pressure was there from the public to create a growth management strategy?

Joe: I don't think that the public was articulating this as, "Do we need growth management?" I think the public was experiencing the problems in different ways in different places and people were frustrated with traffic congestion. Others were frustrated with housing affordability and others were dissatisfied with taxes.

Different stakeholders like the builders were concerned about the permit process. I think cities were frustrated that the counties were trying to be cities, from the perspective of the cities.

The counties were suspicious that the cities were simply trying to cherry-pick away all the tax positive urban lands and the county was dealt the rinds, if you will. So I think a lot of different folks had different reasons for feeling like the old system didn't work and that we needed to do something different.

I think the public articulated that at the ballot box. I mentioned earlier that Derdowski's election by the people in Eastern King County who, by and large, were fairly conservative—I would think Republican-leaning. Even back in the 1970s-80s, that's pretty much what you would find in those rural areas. They unmistakably said, "We're not satisfied," and they said so to a long-standing, very well established incumbent. So I think that was probably the political wakeup call for the political establishment on both sides of the aisle that something needed to be done.

Diane: Can you give a little bit of the other side for context? What was the opposition to the Growth Management Act? How were they accommodated?

Joe: Well, the opponents of the Growth Management Act—I wouldn't say it was any one group. I think there were some political concerns that people had about the Growth Management Act and those concerns helped shape it to make it the way it is. There was a lot of concern in Eastern Washington that we not have an act that would result in people from Seattle and Olympia telling people in Eastern Washington what to do. They wanted to have some flexibility. They wanted to have some opportunity to only do parts of what might be required of people in the more urban Seattle area. And I think Speaker Hayner from Walla Walla was very pointed on this fact.

So, as an example, that's why we have three different hearings boards—one for Eastern Washington, one for Central Puget Sound, and one for the rest of Western Washington. In the Oregon model, there's one board in Salem and it's for all the counties in the state of Oregon. That wasn't going to be acceptable here. If the Legislature tried to do that, I don't think the act would have passed. So that was a compromise that was made and I think it was a good one. The part of where the opposition could have come from would have been the builders. They would think less regulation is better.

Again, I think their perception is they already had plenty of regulation pre-GMA. They had SEPA, they had SMA, they had quite a bit of discretion reserved to the councils of every city and county in the state and no oversight by the state really obliging them to approve anything. In fact, you could argue to the contrary, that SEPA was being used not only as a tool, but as a weapon by citizens, by opponents against projects to kill them.

So, I think people who otherwise would have been philosophically disposed to oppose something like the Growth Management Act had had their fill of whatever was before the Growth Management Act, and they were ready for something different. I think the opposition largely helped shape what was finally adopted, but I don't think I can point to any one group that was just vehemently opposed to the act in its whole. I think there were people who had problems with parts of it, and they articulated that through the legislative process. They

articulated that to the Growth Strategies Commission, and the pieces that were then taken to the Legislature responded to the concern. While I don't know that I can say that there was any active opposition to the adoption of the act.

Again, when 547 was proposed there was a lot of opposition to it. It was overwhelmingly defeated, it was interesting that the leading opposition to that was from the building community, who were scared to death of an even more top-down, more directly centralized system than the Growth Management Act was. But as I said, even the planners thought 547 was a bad idea, it would have been too much.

Diane: We're going to talk about the hearings boards now. Can you give us a brief history of the creation of the growth management hearings boards and why was it necessary to implement them?

Joe: There's been a lot of debate about the boards and what they've done and if it's a good idea or a bad idea. The act has been studied by many study commissions in the past 15 years and the boards always come up GMA part one in 1990 had many requirements and goals spelled out, but there was no discussion of the consequences of the legislation.

Well, what will happen if someone doesn't comply? Voluntary compliance sounds great, but when you get to hard decisions having to be made, voluntary compliance frequently just melts away and you don't have any, whether it's a regional plan or a state mandate.

I think everybody understood that the act needed to have some teeth. And in the arguments against 547 even legislators were saying, "Look we haven't figured out what the enforcement mechanism is yet, but we will do that, we promise to do that." Jeannette Hayner was saying, "We will give this act some teeth, but it's not going to be something we can answer before the next legislative session, but I promise you we'll come back and we'll do it." And she did, they did.

The model for the hearings boards was probably some combination of the Oregon Land Use Board of Appeals and the way that the state agency, the administrative agency in Florida operated—the Department of Community Affairs which was an administrative body and the closest analogue would be to CTED with rule making authority in the Florida system. Well, our Legislature did not want to give substantive rule making authority to CTED. They wanted CTED to continue playing the facilitating, grant administration, technical advice, help role. They didn't want to make CTED a regulatory body, which was the example from Florida and the example from Oregon. The board of Appeals in Oregon was the Land Conservation and Development Commission, which is an administrative body that has to approve any change that is made to a plan or regulation by any city or county in Oregon even before there's an appeal

So, those models were conceptually the starting point. Where the Legislature went with that was, "That's too much authority to put in an administrative agency. That's too much centralized, top-down from the state capital in Tallahassee or Salem—we don't want to do that." So they came up with the regional diversity of three boards. The other innovation was that these would not be all attorneys. One would have to a local elected, one would have to be an attorney, and the third wouldn't have to be a local elected or an attorney. People for years asked me, "Oh, you're the planner member of the hearings boards." They had this idea in their mind that one had to a local elected, one had to be an attorney, and one had to be a planner—that's not what the statute says.

The statute says that all three, on each of the three boards, must have familiarity—either by practice or training—in land use planning. And then they just rely on the Governor in the choices that he or she makes,

is sure that whoever those people are, that they have that kind of background. So, it turns out on the central board at the outset there was a former local elected—a mayor, a former councilman from Bellevue—there was a former deputy prosecutor from Kitsap as the attorney member, and then there was me—not an attorney, not a former local elected, I was a planner. And the way that the team worked by having two non-attorneys arguing with the attorney member on what must the answer be to this question made for a very balanced look at the issue.

There would be times when the board members would defer to the attorney member as to a purely legal question, something like standing where there's no land use implication for you administer standing. So on those sorts of things, the attorney members had a much greater role in determining how the board responded to jurisdictional questions, pure legal questions rather than what do the substantive requirements of the Growth Management Act allow or require a city to do? Well that's not a purely legal question—you also have a policy dimension, a planning dimension, and a political dimension, if you will.

And I think having the former elected officials on the board did a couple things. They brought a certain amount of credibility into the board review system, because these people had to have some familiarity with the local government predicament because some of us had to be former local elected officials.

So I think that went a long ways towards conveying that these were people with some expertise, with some sympathy to the situation that the cities and counties found themselves in. When the decisions were issued by the board, it's not just a law, it's good policy. And it's pragmatic policy because the local elected is always looking from the perspective of, "Well, what is this going to mean to me if I'm an elected official and the board says this? How am I going to react to that? How much is it really reasonable to expect local officials to react in a way that is going to be really what you're trying to get at here?"

So we tried to write for a lay audience for the boards; we didn't try to make people look like they were overly technical, loaded with legal jargon. We wrote for a broad audience and it's interesting, some of the criticisms that I read were that, you guys are writing for more than just the parties to the case, you're not just answering A wins, B loses. Well, we talked about that for a while and we agreed with it. Yeah, we weren't just writing for A and B, we were writing for anybody who wanted to look at that decision and a lot of things did go up. So if the judge wanted to look at what we were saying, we tried to lay out our reasoning for why we were saying what we were saying. Then I took on as a personal crusade to let planning practitioners know what the board had said on a subject so that before you planned again, you had the benefit of someone else's experience on what has passed muster and what hasn't.

So I think it's worked really well in practice because—again depending on whom you talk to and how you slice the legal issues that the courts have reviewed—by and large the boards have been upheld by the court. The question of how much deference to give to the board by the court is a subject of recent controversy. How much of the deference of the board is owed to the local elected official has been an ongoing subject of controversy. But I think on the whole it works pretty well.

Diane: What were your thoughts when you were selected to be a member of the Central Puget Sound Growth Management Hearings Board?

Joe: It was a real opportunity. I was flattered and excited because I'd been dealing with these issues through the Planning Directors Association and AWC and giving some input to the Legislature and the Local Government Study Commission work. I thought I had a real opportunity to try to explain what the statute

means to people as issues are brought to it. It's a reactive role in that you don't get to tell people what you think the act means unless there's a controversy in front of you, but you have to have a process and an argument. You need to weight the facts and here's why A wins and B loses in terms of what the words of the statute must mean, because frequently what the dispute is about is the parties are looking at the same words of the statute and disagreeing on what it means. Well, inevitably somebody had to look at that to dispose of the appeal. So I was looking forward to how this was going to work, how it's really going to play out as people try to comply with the requirements of the act. And others would challenge that and say that's why it doesn't comply, and then be able to weight those and clarify further what the act must mean, and what it must allow or require people to do.

Diane: Please tell us the years you were working on the hearings board and what the highlights in terms of the job really were.

Joe: I was appointed to the board in April of 1992 and I served until July of 2004 for about a 12-year span. The biggest challenge was trying to adjust your workload when you really had no control over how many petitions you had to deal with at one time. There was an inevitable ebbing and flowing over how many cases were filed depending upon when the deadlines fell to adopt plans for development regulations, county-wide planning policies, to designate critical areas, and so on.

So if you've mapped out over time when the petitions were filed, you'd see very distinct spikes right around those times. The biggest spike I ever dealt with was in 1995, which was an echo of the deadline of 2004 for this region to adopt plans and codes. You had four counties and 80 some odd cities all adopting plans and codes within about a six-month period of time—a bunch of appeals all coming in at once, and I think the peak year in 1995 was something like 75 cases. Most years were in the range of 25 to 35 cases, so it was frustrating to have so much on our plate at one time because you didn't get to say, "Well, we'll spend more than six months on this one." You had to take only six months on all of them. At other times, when for whatever reason, there weren't as many cases to deal with, the challenge became, "Well, how do I spend my time being useful to the board? Being useful to the purpose of the act?" And that's when I started spending my time working on conferences and public speaking.

So that's how we dealt with the fact that we really couldn't control the workload. When there was too much, you just worked as hard as you could and as smart as you could. 1995 was a real crunch and that's essentially what we're going through right now, because as of a week or so ago, they were on par to break the record, they're going to have over 100 cases this year. And again, that's a consequence of the deadline of 2004 and the subsequent actions and challenges and all that. So, that's the hardest part of the job, you don't control the workload. It's pretty rare and it hasn't been the case for a number of years, but in the early years there wasn't always enough to do. We spent that time working on public outreach and perfecting the rules of practice and procedure. For the past ten years, though, there frankly has been too much to do. I can't speak for the other two boards. I don't know what their experience has been. But probably the biggest challenge was coping with workloads you really can't control, you can't meter out.

Diane: And what were the highlights?

Joe: The highlight was looking at how people were succeeding in complying with what the act required and clarifying what the law required. And then seeing people able to take that direction and, on remand, do something the way that we construed the act required them to do it. Clarifying the law for people was gratifying. Being able to say in the Lynnwood case, "Sorry Lynnwood, but in order to do what the GMA

requires counties to do in sizing the UGA, Snohomish County does have to be able to tell you how much population and employment you have to accommodate."

The good news is you can't say exactly where in Lynnwood to do that because that would be intruding on your prerogative for how you account for your growth, but clarifying the law was enjoyable. Talking about it to groups of lawyers, planners, elected official—that was a lot of fun. Being able to make something that people took to be something mysterious and scary and make it less mysterious, and make them more comfortable with what it was the act says, what it was after the board did say. And they were able to quote vast chunks of case law and PowerPoint—here's what we said about public participation—we took the very words out of that case, now read this!

Look at what they did on Bainbridge Island, they changed something at the 11th hour, literally the last night before it was adopted. They said, "Let's change this." Well, nobody'd seen that before, nobody commented on it, nobody had a chance to respond to it, but they wanted to change it at the 11th hour. That was challenged by somebody saying, "Wait a minute, I didn't get to tell them what I thought about that one last piece." And the board said you're right—early, continuous public participation means, local legislative body, you have got to give the public a reasonable opportunity to review everything that you're considering doing to let them tell you what they think. You don't have to agree with them, we're not saying citizens decide, but you do have a duty to let them know what you do before you do it, and if that means that for that last minute change you want to make you have to carry the item over for two weeks, then you carry it over two weeks.

In the example, on Bainbridge Island, they were literally trying to do it that night because the staff person who'd worked on that for many, many months or years—it was her last night there, and they wanted to do it to honor her. What noble sentiment, but not a good enough reason to say, "Sorry public, you don't get a shot this last night." That's the kind of thing—we try to write the holding, points of law, into a digestible bolded holding like, "Here's the take home message! It's this paragraph right here! This is what the case is going to turn on." Then you can put it on a PowerPoint slide and go and show it to anybody who was interested in the subject—"What do we have to do? Don't do this, make sure you give the public a chance." And again, some this has been, in prior history, elected officials thinking, "Well, we're elected to make this decisions and people expect us to make these decisions so we're just going to make it." Okay, well that is still true. You still do the adopting, elected official.

Policy matters under the Growth Management Act, and you're the policymakers! Be secure in that, feel good about that, but public participation means you have to let the public tell you what they think before you make the decision. Even on last minute things that you think might be minor. So that's been gratifying to be able to clarify the law and explain it to people in a way it's useful.

Diane: What should local governments be most aware of regarding the hearings boards?

Joe: Well, I think two things. One is to remember who they are. They're not hearings examiners visiting from another state. They're not people who have never been in your shoes. They're people who understand how local government works. They've seen what can be expected at the best and the encouragement that sometimes is needed from someone to say, "You really might want to do it that way, but you really ought not to do it that way and the law won't let you do it that way, so don't do it that way." So part of it might be just to understand it. The hearings boards are people who have not just expertise but they have familiarity with the challenges and the constraints of local government.

The second thing would be for them to know the hearings boards have been doing this for 12 years. Online is a digest with every decision and every holding organized by topic. There's a lot of stuff, just by reading the statute, you wouldn't know the answer, but by reading the digest you would know the answer. And you have both city attorneys and planners who can do this work for you as an elected official by just saying, "Be aware of what this board has said." It almost seems criminal not to know what the established precedent is before you act. To get challenged and to be found noncompliant on something that some other city was found noncompliant on eight years previous is so wasteful. There's no reason to make the same mistake that someone else made.

So, I think that's the other thing I would hope they would recognize—that the hearings boards have fashioned a body of case law that's readily available that can help inform them before they undertake plans, regulations, capital budgets, county-wide planning policies. The boards have said a lot and the boards are usually right on the law so if the boards have said it, unless its overturned—and there have been cases where the boards have been overturned—but if the board hasn't been overturned on something or challenged on something it's only prudent to get that information before you act.

Diane: Do you have any other comments about the hearings boards?

Joe: I guess the only other thing I would say about the hearings boards is that an early criticism of having three boards was a concern that they might read the law differently. What if the statute is interpreted to mean one thing in the Eastern Region, but something different in the Central Region? Well, in practice I don't think that's been a problem, because I think we have always taken great pains in the Central Region to say anything we say here today is not binding anywhere else in the state.

The only exceptions to that are, if it goes up on appeal and a court outside of our jurisdiction says this is the law, well then, it's the law according to the court. Or the Legislature might look at something the board has said and adopted that into a statute, which would then apply throughout the state. That's happened a number of times. But when the board decision is written, the board decision itself doesn't apply outside the jurisdiction of that board.

There are three divisions of the Court of Appeals. What happens if Division One sides one way and Division Two decides a different way, but that's not been a practical problem. If it does happen and it is a practical problem and if it goes up on appeal, the courts will settle the answer. And again, that's happened too. So, I don't think it's been a problem. I think that's a great strength of our system—that there are three boards, not one.

The body of case law in Central Puget Sound is reflective of the fact that we have 82 cities and four counties within less than 10 percent of the land area of the entire state. That's very different than the rest of the state, and I think some of the things that have been said here are appropriate here and they may not be appropriate at all for other counties of the state. So I think if we had a one-size-fits-all system like Oregon has, you wouldn't have gotten these differences. I think it's something that has been respectful of that original idea that Jeannette Hayner was advocating of regional diversity, to reflect different circumstances to different priorities in the different parts of the state. No other state does that.

Diane: Do the three boards communicate?

Joe: The three boards meet once a year—actually they meet twice a year. By statute they have to meet once a year. In practice, maybe twice a year. We'd talk about things like the rules that they have in common.

They'd get an update from certain state agencies, CTED, Department of Ecology, cities, counties, builders, environmentalists—just to listen to what their perception is of how things are going. And to hear suggestions they might have for how the board might conduct its business in a way that works better for their group. The boards don't call one another up and say, "Hey I've got this case with this issue, what do you think?" That doesn't happen.

If it does, I'm unaware of it. But in my experience, we took great pains not to talk about what another board had said on a similar issue in a similar case unless we really needed to. Because it's very typical now with so much case law there for parties in a case to say, "Well, these two boards decided in our favor in a similar case, you should agree with those other boards." Well, the other side would say, "You should agree with us and reject the other board's reasoning." You get that kind of argument in briefs all the time, but I think the board has wisely stayed away from judging the other judges, again, unless it's essential to resolving the matter in front of the board.

Tape 2, Side 1

Diane: In terms of how the GMA is structured, what do you think are the most important parts of the law?

Joe: Well, I think you could talk about a couple different things when you talk about the structure. The act—there's an intent section at the front end, actually there's an 001 and 011—they're both there that are general aspirational, "Here's what we're trying to do, here's the purpose of all this." That's useful.

Then there's the goals—planning goals—and there are a bunch of substantive requirements that follow. A lot of the figuring out of how this statute works in the early years, I think even now, had been, "What's the relationship between the goals and the requirements? And can you comply with the goals and not with the requirements or vice versa? Can you cite to a goal and say, 'Well, we're doing the requirement because the goal over here says we have to do this or that.'" And that's been litigated, the courts have looked at it, the Supremes [state Supreme Court] have looked at it, so there's more clarity now about the relationship between the goals and local action or requirements and local action. But that's kind of evolved over time because the statute has been amended every year since 1990, so the Legislature's been going in and changing different pieces here and there and the boards have had to kind of adjust to those changes over time. As an example—when the act was first adopted you had to comply with the goals and requirements of the act. If you didn't comply and the board told you had to do something, the board simply told you that you were in noncompliance, and then they gave you six months to fix them.

There was no invalidity authority. Invalidity authority was created in the middle of the 1990s—I forget what year exactly. But ostensibly it was proposed by the builders who were saying, "Well, what happens when a board finds the county comprehensive plan to be noncompliant? Does that mean we can't vest permits? Does that mean people can't rely on development regulations? What does it mean?" And the way they tried to answer that was by crafting this new tool called invalidity that says when a board does find noncompliance, they have to specifically describe that which they're finding noncompliant and determine if it is still valid? And if so, which parts are valid and which parts are invalid for purposes of vesting permits? Okay, so they said that, but then what's the test for deciding if something's invalid, not just noncompliant? And what the Legislature came up with was to say, well if noncompliant, okay that's the same as it's always been. But if it's invalid—if the board concludes that the continued validity of the challenged provision would thwart the fulfillment of the goals… What does that mean? Well, then you have to go back to the 13 goals, which when

they were first adopted in 1990 had a preamble—this is in 020—and the preamble says, these goals are to be used exclusively—that's an interesting word—exclusively in the preparation and formulation of plans and regulations under the act.

So when they wrote those words it didn't say, and they're to be used for purposes of evaluating whether something is so egregiously noncompliant that it's also invalid. But when the Legislature created invalidity, they had to create some criteria to let the board know when invalidity is supposed to be called for, rather than say, in those circumstances where it's more than the minor noncompliance, say big noncompliance— they use the phraseology—if it would interfere with the fulfillment of the goals of the act. So the Legislature effectively told the board that in weighing whether or not to invoke invalidity to, "Go back to the goals, look at the goals again."

So now, you're using the goals for something other than cities and counties being guided by them in the development of plans and regulations. They're now being used by the board as the criteria for determining how egregious an offense is, and whether it merits the local action being invalidated.

So that was one interesting way that the statute has been adapted—to clarify that goals have more than a single purposes. They initially provide "guidance" to the cities and counties in preparation of plans and regulations. After an adopted plan or regulation is challenged, the goals are again reviewed by the board to determine whether or not invalidity is warranted.

The interaction between the GMA's goals and requirements is still widely misunderstood. Even recent Supreme Court cases suggest to me that the courts don't entirely understand this relationship. In previous cases local governments have tried to point to goals and say, "Well, there's a property rights goal here and an economic development goal there and a housing supply goal over there. So in balancing these goals, as authorized in the preamble to the GMA's goals section, we're going to read this requirement over here like it doesn't really require us to do what people might think it requires us to do because if did, we couldn't meet these goals." That is effectively what King County said in the *Green Valley* case, citing the recreation goal to justify allowing soccer fields on designated agricultural land. It's also essentially what Bellevue argued in the *Bennett* case, that the anti-sprawl goals justified exempting shopping center redevelopment from concurrency. The board, and the courts on review, rejected that reasoning in both instances. The fundamental principle is that a specific requirement of the act isn't trumped by any goal, regardless of how a local government "balances" the goals. Now, if there's a specific requirement and it appears to be in conflict with another requirement, then you can look to the goals and the goals can help illuminate how you resolve that apparent conflict between the requirements. But you can't just cite to a goal and expect it to excuse you from meeting a clear requirement.

This was an issue in the soccer fields/agricultural resource lands case, where there was a requirement to designate and conserve agricultural resource lands. So the county then said, but there's a recreation goal, we want to put soccer fields on designated agricultural resource lands. The board and the court, the Supreme Court said, you can't do that. A goal does not trump a requirement.

Diane: How would you say the GMA has changed land use patterns in the state?

Joe: Well, I have the greatest familiarity with this region [King, Snohomish, Pierce, and Kitsap counties]. I really wouldn't want to pretend to know what's going on in other parts of the state. I think the primary way it's changed land use patterns in the Central Puget Sound region is it has made urban areas and rural areas and resource lands—agriculture and forest resource lands—more distinct. On the ground, you can see with greater

clarity now where the city ends and something else starts. I'm not saying that's crystal clear, it's not like a European model where the village ends and then the farms start and open fields are green. It's not that distinct because there was an awful lot of urbanization scattered all over the countryside pre-GMA. And there are vested permits that are built well into the era of the GMA, so that to some extent there are still these outliers of urbanization in the rural area.

But on the whole, I'd say that the pattern has been to reinforce more compact development within urban areas, within incorporated areas, and to keep the rural areas more open, more rural in character. The Legislature actually coined that phrase, "rural character," with an amendment in the mid-1990s to say that's what we're trying to do with a rural area—not just rural uses, but rural character. So I'd say that's probably the biggest difference that it's made.

Whereas pre-GMA there was no such thing as an urban growth area, there was no designation called a rural or resource land per se. Everything could be anywhere, so you had a blurring of the visible and functional landscape pre-GMA. That's a phenomenon that some would describe as sprawl, but GMA has said everything is one of three things—either it's urban, or it's rural, or it's resource, there is no fourth thing. Everything is one of those three things and what you can do in those three areas are different. So I think that has had an effect over time in this region, so it's easier to see where the cities are and where the countryside is.

Diane: Can you name the five most important successes of the GMA?

Joe: Well, this is where I have to consult my notes. I got six actually, is that okay?

Diane: Oh, good.

Joe: Well, I guess one of the important successes would be this transformation of local governance that I talked about, because there was an awful lot of role confusion with cities, counties, and special districts before the Growth Management Act. There's a lot less confusion now about that and that's a major success. I don't suppose you can easily find measures to quantify that, but one would be all the incorporations and annexations that have happened in the name of that transformation in the past ten, 15 years—over 400,000 people, a big chunk of the population of this state of five or six million. So that's been a success.

Another thing the act has done is it's really clarified the importance of policy. I mean, one of the phrases that was common for many planners in this country to hear for a long time was, "Well, we don't want to do another plan gathering dust on the bookshelf. Everybody will ignore it because for whatever reason they don't want to pay any attention to the plan that they developed." Well, under the Growth Management Act you can't ignore the plan. Consistency is required. You must be consistent with your plan. So I think that's really reconnected planning and the comprehensive plan to what actually happens in the permitting side, the regulatory side, the capital budget—so policy matters under the Growth Management Act. It's a big, big success. People can't put things on the shelf to gather dust any more. Now that also means you have to be careful what you say in that plan. Don't say it unless you mean it. If you don't mean it, don't say it. That's another success—policy matters.

Public participation, I think has really been reinforced. In all the challenges to the growth hearings boards, or the central board at least, most of the cases where the board has had to invalidate an action has been because of the public participation problem. It's not been substantively, you missed a step on what you can do with concurrence here, what you can do with growth areas there, or what you have to say about critical areas. It's because somebody missed the gate of public involvement. It's the kind of thing that you can't just fix by

saying, well it's a minor noncompliance. You didn't have a hearing, you didn't give the chance to the public to say what it thinks of that which you are about to do but, hey, it's not a big deal. Well, no, it is a big deal. It's fundamental. The public has to have a chance to say what they think. And of all those cases where the board remanded and said, you need to do this again—you need to give new notice, you have to give people the opportunity to review what you've done or what you're proposing to do, tell you what they think—in writing or in a hearing, either way—and then give yourself a reasonable period of time to consider what they said, and then you make your decision.

Well, early on, the first time we did that there was a lot of grousing by people saying, well you're just making us go back through the same wicket. We're going to go back through the same wicket, we're going to do exactly the same thing because in your very order you said, we're not saying substantively that what you did was wrong, you just did it with the wrong process. So, this is a drill, why are you making us do this, this is silly. But actually, over the course of the cases where it's been remanded on those grounds, there have been at least three or four cases where the county or the city did something totally different on remand.

Two examples that come to mind—one was King County—the Duwamish Valley where they rezoned in a residential area to industrial. The neighborhood association said, wait a minute, you made this change without notice. If you looked at the map, the map had no scale, had no north arrow. You couldn't tell what part of the county this was in. We said, you need to do this again. You need to give notice, have a hearing, and then you do whatever you do—and that can be challenged and if it's challenged then we'll look at the merits of that. Well, the county reconsidered, had another hearing, listened to the neighborhood, and decided not to rezone it. So, it's not true that the county or the city, when they miss a step, will always go back—especially if it's the public involvement step—and do exactly the same thing they did the first time. It hasn't always been the case, so I think that's a big success.

People talk an awful lot about bottom-up versus top-down and people say GMA is top-up, it's not bottom-down—cities and counties, elected officials are the ones that make the decisions. They definitely are the policymakers; that is absolutely true. But the bottom of bottom-up is not the policymakers—it's the people. They have to listen to what people have to say. You have to give them a reasonable opportunity to say what they think and then the policymakers have the prerogative to agree with it or not when they do whatever they do—in the plan or the regulation or the budget or whatever it is. But I'd say another big success has been the importance of public participation as the bedrock of all this.

Another success I think has been—I thought about how to articulate this because you could really get this wrong if I worded it differently. So let me say what I've written here and then I'll try to explain it: "I think it's been a success to make explicit that there's connection between declining levels of service and a lack of political will to pay for services to be maintained." Now, when I wrote that I thought, well people are going to think he's talking about concurrency. Why doesn't he say concurrency's a success or concurrency is a failure? Because I think you can argue both [laughter]. But what I think the board in Central Puget Sound has interpreted—concurrency and adequacy for transportation and other kinds of facilities—the board has said, look, there's good news and there's bad news.

The good news is there's no particular level of service you have to adopt. If you want to adopt level of service "F"—you don't even have to call it that, you can call it 1.0—you can describe it anyway you want, just so it can be understood by people and you can measure change over time in the system. Well, the good

news is there's no absolute level that you do have to adopt and the bad news is you have to do it and you have to do it in front of God and everybody. You have to be on the record. You have to explain, "This is what we're doing, this is our standard." And over time as the standard changes you have to be open and candid about, "It's changing, the levels are declining." Now, if you want to then say, "And we don't have the money to make the improvements to improve the intersection or the road segments or to provide the parks that we like," then you have to change the standards. You can't simply say, "Gee, isn't it too bad. We're having more permits being issued, more growth in the community, more traffic, more demands for parks—we don't have the money. Okay, next agenda item for tonight's…" No, you have to do something. You have to, on the record, amend your plan to adjust the level of service or adjust how you're measuring performance of the service levels you're getting.

So one way I would summarize this is by saying, "The success of the act in this realm has been to say, the act has obliged local governments to be open and honest about the connection between growth and service levels and public finance. You don't get to sweep these things under the rug anymore. You have to face them. You have to be candid about it. You have to adopt it as policy. You have to change it as things change."

Again, I think that some elected officials would think this puts them in a very uncomfortable spot and makes them look like they're failing as elected officials. I don't think that's the case at all, because I think elected officials, from everything I can tell, are working really hard to do what they think makes sense for their communities. But if they don't have the financial tools to make the improvements to roads and utilities, parks, schools, whatever it may be, the service levels for those things is going to decline as growth continues. It's a pretty simple concept. More demand—either a fixed or declining resource to meet the demand—you have a declining level of service. And all the act is saying is, you must have truth in planning. You must be truthful about the consequences of growth without sufficient resources to make the improvements. I would consider that to be a success. Some would say, "Gee, that's a very dismal outlook on how concurrency has operated." Concurrency has not operated as well as I think some had thought it would. It was an idea that was borrowed from Florida—it hasn't worked well in Florida either [laughs]. They've amended it and tweaked it many times over the years, and I expect we will at some point too. But the notion that you don't get to just exempt yourself from concurrency was a decision that was made by the Court of Appeals.

There was a board case—*Boeing/Bellevue*—where Bellevue wanted to say they didn't have to meet traffic concurrency for a development of commercial neighborhood centers. And the board looked at that case on appeal and said, yes, you do. You have to meet concurrency. If you want to reduce your level of service that's an option you have, but you can't simply exempt it. You can't simply say, it doesn't apply, it's exempt. That's the very kind of thing that concurrency is intended to address. And on appeal the court agreed with the board. In fact, it went farther than the board and kind of intimated that the reason you can't have this exception is because you can't have any exception. The board never said you can't have any exceptions, we simply said, humm, you can't have this one because you can't have an exception from that which the act explicitly is directing you to address.

So I think that was a success. Being upheld is always something that makes sense and because the Court of Appeals said, in no uncertain terms, you don't get to exempt yourself from a concurrency requirement. They were telling Bellevue, if you really want to get to the outcome that you want which is to facilitate the redevelopment of that commercial business district, you've got to figure some other way to do it than exempting yourself. As the board pointed out in our decision, if you want to change the level of service, that's

an option you have. That would be GMA compliant. At any rate, so that's another success I think—truth and consequence—the act makes the consequences really clear—you'll have to do it truthfully and openly.

And I guess the final success that I would point to is… I think I talked about this earlier—the fact that the landscape is becoming more distinct and less blurred. Cities look more like cities. The countryside looks more like the countryside. Because when you have a lot of growth, unless you can keep those three different things looking different, it's all going to look like suburban sprawl, it's all going to look the same. And I think that would be something the act was designed to help keep from happening. I haven't talked a lot about the word "sprawl," but that's part of what people were using as sort of a catchphrase for all the ills of unmanaged growth—growth in the wrong place, growth that doesn't respect visual character of the environment, inefficient service delivery, congestion—it's all these bad things. But I think the success of the act is it's helped to reign in sprawl.

Diane: Can you give an example of how the GMA is working at the local level? Can you cite a specific community where you see it working well?

Joe: Well, I think—again I'm most familiar with this region and with King County. I know that King County tracks how many permits they issue every year for different kinds of development, and they've plotted on a map of the county where that's been occurring over the last couple years. And they've set targets for how many more of those residential units they want to be inside the urban growth boundary as opposed to the rural area, and they've been very successful. They're reporting in their annual growth report the pretty small number of units that are being built in the rural area. I think that's an example of implementing this concept of having most of the growth occurring where services exist in the urban area. And a relatively small percentage, not none, but a relatively small percentage of growth occurring in the rural area where you have these other natural systems and open space objectives, and you want to acknowledge the fact there are not a lot of facilities out there to serve a lot of new growth. There's no water and sewer in most of the rural areas—they need septic, septic and/or wells to get those facilities. So it's one success at the county level where King County has been successful in concentrating growth in the urban areas—not just in cities, but in unincorporated urban areas too. That's one example.

There've been a number of cities where the city centers have seen an awful lot of growth and development and mixed-use, more compact, more dense development—downtown Renton, has the density and design focus, they didn't have 15 years ago. It has a lot more family housing opportunities right in the commercial district, in the core area. That pointed to a success, I think, quite a bit. I think there are lots of other examples that CTED has described on its Web site—Sumner, Redmond, Kirkland, Everett, Tacoma—are all big successes.

Diane: How do you or your organization view growth management today?

Joe: Well, I'm a consultant, but part of the time I hang my hat at the University of Washington as an instructor at the Northwest Center for Livable Communities. One of the things that that group has done is to sponsor a forum back in May of this year on the Growth Management Act, asking the question, "How are we doing? What can we do to be doing better?" And it convened a stakeholder group, not every stakeholder, not everybody agreed to participate, not everybody came, but we had a fair number of groups—state agencies, businesses, realtors—come and talk about the issues.

So I think that the reason we were doing that as a center at the university was because, I think, the act

obviously has great value. There's a lot of interest in it, there are issues that are ongoing issues and changes that people want to advocate to make it work better. And even linking things that are outside of the act, but are really important to the success and some of the goals of the act. Some of these are other statutes that are outside of the Growth Management Act. Some of these are directions perhaps the Governor can give to state agencies on how they conduct their business. Some of these are things that the universities could be doing—the services and research they provide to both government and the private sector.

So there are lots of things that can be done to make this all work better for the state. I think that's part of the mission of the Northwest Center for Livable Communities. So I can say as an organization, we're an advocate for managing growth as well as we do, and without presuming that it's as good as it's going to be. The other thing that we do out at the university, just as an aside, is we teach a class to the graduate students in the planning program called Comprehensive Planning and Implementation, and we use the Growth Management Act and planning in this state as a model for how it might be done.

One of the things that we emphasize is this is really kind of a unique laboratory in the country because many of these graduate students are coming from other parts of the country and they're going back to other parts of the country. So, you might think, "Well, what do they need to know about the Washington way of doing city/county cooperation through county planning policy? What do they need to know about integration of the Shoreline Act and Growth Management Act regulations?" I think the answer to that is no matter where they go back home—whether it's Tennessee or Texas or Georgia—a piece of what's in the Growth Management Act is probably what they'll be dealing with back home. Maybe not all the pieces in the Growth Management Act, but they might be dealing with annexation, service delivery issues with cities and counties back in Colorado. They might be dealing with agricultural resource issues back in Idaho. These city/county resource and role debates exist in almost every state so Washington is one way to think of—it's sort of a cafeteria. Everything that you can imagine might be an issue back home—it's part of our system here. Either we have a part of our system to deal with it or it's a gap and we're talking about ways to try and close that gap.

Diane: I think my final question is, if another state wanted to adopt growth management law what advice would you give them?

Joe: Well, I would say—begin by defining the problem you have—what's really pressing? Is it urban area issues? Is it resource land issues? Is it water quality? Is it lack of financial tools to provide services? And then decide, do you have to go with the Washington approach to deal with everything comprehensively or would it work for you to focus on, let's say, urban service delivery and the annexation statute, which Tennessee did. So I'd say start by defining your problems and what are the problems you're trying to solve.

And then deciding how far afield you have to go, topically, to address that effectively. Certainly look at examples from other places. Look at the growth management states. Now there are about 12 states that have state laws that they would either describe as growth management or smart growth of some kind or another. And they're all different—Maryland has a focus on state investments in areas of regional priority as defined by the state, but a very light regulatory approach. Oregon is probably the reverse—very heavy regulatory approach and not as much focus on state investment. Washington is somewhere between those two extremes—they have a regulatory piece—there's somewhat of a state capital approach which there could be more of. But there are lots of examples to borrow from so don't be bashful about borrowing.

I'd also say don't be timid about innovating. We made up the three boards system. We made up the

notion that they didn't all have to be attorneys and I think those two things are innovations that have served us really well. Florida now is looking at revising their appellate structures—they relied on the court system in which you get a very different outcome depending on which circuit you wind up in Florida. So they're looking at the Washington growth hearings boards model among other things.

So I guess that would be my general advice—define your problem, define how far afield you need to go to solve your problem, borrow liberally if you think it fits, and don't be afraid to invent something or make it up if nobody else has done it yet.

Diane: Great. Do you have any other comments?

Joe: No, I could go on for days [laughs]. This has been very interesting—kind of gives me an opportunity to sum up a lot of what I've been thinking about for these many years. And I think it's important to do so, especially when considering what's now going on in Oregon and Florida, the two other major growth management states in the country, who've been doing this for even longer than we have. I think it's really important that people stay connected to, "Why are we doing this? What would it be like if we weren't doing this at all? What was it like before this?" And keep that connected to the public and as broad and as personally as you can because what they found in Florida—there have been studies that have been done on this—is that the people who live in Florida now, many of them either didn't live in the state of Florida in 1974 or weren't old enough to know about why they did what they did in the mid-1970s with their growth law. I think the same thing is true in Oregon. That at least contributed, I think, to the success of their property rights Measure 37 last fall.

So I think it's vital that we undertake some pretty ambitious ways to keep the public engaged in why we're doing it this way. It's not the way everybody does it, it's not even the way we used to do it—and to stay engaged in making it work, either the way it reads now or with whatever changes are appropriate. I think that's an important thing, for people to keep the promise of the act alive and valid because if it gets disconnected from them, the dream kind of gets disconnected from the people, eventually I think bad things will happen.

Diane: Thank you.